

Application No. 10/584,510
Paper Dated: December 21, 2010
In Reply to USPTO Correspondence of June 21, 2010
Attorney Docket No. 0470-061930

REMARKS

According to the Office Action dated June 21, 2010, claims 18-39 were pending wherein claims 18-33 were examined on the merits and rejected under 35 U.S.C. § 112, first paragraph; 35 U.S.C. § 112, second paragraph; 35 U.S.C. § 102 and 35 U.S.C. § 103. The Examiner also objected to claims 19-20. Claims 14-39 have been withdrawn. In view of the remarks below, Applicants respectfully request that the rejections and objections be reconsidered and withdrawn.

35 U.S.C. § 112, FIRST PARAGRAPH

Claims 18-33 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action states that the specification does not provide support for “an equivalent thereof.” The claims have been amended to define “equivalent thereof.” For this reason, Applicants respectfully request that this rejection be withdrawn.

35 U.S.C. § 112, SECOND PARAGRAPH

Claims 18-33 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action states that claim 18 is indefinite because of the recitation of “pantothenic acid equivalent.” In part, the Examiner contends that claim 18 does not recite an upper limit of pantothenic acid equivalents. Claim 18 has been amended to add an upper limit. For this reason, withdrawal of this rejection is respectfully requested.

Claim 21 has also been rejected as indefinite. Since claim 21 has been cancelled, this rejection is now moot.

Claim 22 has also been rejected as being indefinite because it is unclear whether the serine and glycine are provided in addition to the proteins. Applicants have amended claim 22 to clarify that the serine and glycine are not in addition to the proteins recited in claim 18, but rather part of the proteins. Accordingly, withdrawal of this rejection is respectfully requested.

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Claim 23 has been rejected as being indefinite because it is unclear if “(1-10 g yeast, cytidine, uridine, nucleosides)” is a claim term. Applicants have deleted this portion of the claim. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 23 has also been rejected as being indefinite because the Examiner contends that pantothenic acid cannot be (R)-pantoate. Applicants have deleted the recitation that “pantothenic acid is (R)-pantoate”. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 24-26 have been rejected as indefinite because the scope does not correspond to base claim 18 with respect to the caloric value. Claim 18 has been amended to delete the upper limit of the daily dosage form. Accordingly, the limits recited in claims 24-26 are consistent with claim 18, and withdrawal of this rejection is respectfully requested.

Claims 27-32 have been rejected as being indefinite because the claims recite that the invention as recited in claim 18 further comprises lipids. The recitation of “further comprises” contained in these claims have been replaced with “wherein the composition comprises”. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 32 stands rejected because “there is no requirement that the composition comprises any fatty acids.” By amending claim 27 to replace “further comprising” with “wherein the composition comprises”, as suggested by the Examiner, this rejection is now moot because claim 32 depends from claim 27. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 33 has been rejected as being indefinite because the scope does not correspond with base claim 18 with respect to the amount of lipids and carbohydrates because claim 33 recites a range that is outside the range recited in claim 18. Claim 18 has been amended to delete the upper limit of the lipids and carbohydrates. Accordingly, withdrawal of this rejection is respectfully requested.

35 U.S.C. § 102

There are two rejections asserted under 35 U.S.C. § 102. In the first rejection, claims 18, 21, 24 and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Larson¹ in light of Priya Chemicals². In the second rejection, claims 18, 19, 21, 23-25 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Verheul-Koot³ in light of Kirkman⁴. For the reasons discussed below, reconsideration and withdrawal of these rejection is respectfully requested.

I. Rejection based on Larson

In part, claim 18 has been amended to recite “A composition … further comprising at least 15 En% proteins that comprise … 1.5 to 4.0 g of tryptophan per 100 g of proteins” Based on Priya Chemicals, Larson teaches that the amount of tryptophan to be used is 0.87 g tryptophan / 100 g casein, as opposed to 1.23⁵. With this correction, Larson teaches using 1.26 g tryptophan / 100 g of protein in its composition. Since Larson does not teach or suggest the recited range for tryptophan, it does not anticipate claim 18, or claims 24-25, which depend from claim 18. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

II. Rejection based on Verheul-Koot

With respect to the rejection based on Verheul-Koot, like Larson, Verheul-Koot also does not teach the ranges recited in claim 18. The references disclose a lower amount of methionine and a lower amount of tryptophan. Claim 18 recites that the composition “comprising at least 15 En% proteins that comprise 1.8 to 6 g of methionine per 100 g of the proteins, … [and] 1.5 to 4.0 g of tryptophan per 100 g of the proteins” Kirkman teaches that the Pea Protein Powder contains 1.31 g of methionine per 100 g of protein and 1.06 g of tryptophan per 100 g of protein. Thus, Kirkman teaches using an amount of methionine and tryptophan that is less than the recited ranges. For these reasons, reconsideration and withdrawal of this rejection is respectfully requested.

¹ U.S. Pat. No. 4,497,800 to Larson *et al.* (“Larson”).

² “Casein Base & Soya Base,” Priya Chemicals (“Priya Chemicals”).

³ U.S. Pat. No. 6,846,494 to Verheul-Koot *et al.* (“Verheul-Koot”).

⁴ “Pea Protein Powder,” by Kirkman (“Kirkman”).

⁵ Office Action at page 10.

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35 U.S.C. § 103

Claims 18-25 and 27-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Larson in light of Reid⁶ and Virgin Coconut Oil⁷. As discussed above, Larson does not teach the recited range of tryptophan. This deficiency is not overcome by Reid or Virgin Coconut Oil. For these reasons, reconsideration and withdrawal are respectfully requested.

OBJECTION TO THE CLAIMS

The Examiner has objected to claims 19 and 20, and has requested that the Applicants add the term “protein” after “plants,” “vegetable,” “cereals,” “seeds,” and “whey.” Applicants have adopted the Examiner’s suggestion. Accordingly, withdrawal of this objection is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the rejections and objections asserted against pending claims 18-33 be reconsidered and withdrawn, and that these claims together with new claims 40 and 41 be allowed.

Respectfully submitted,
THE WEBB LAW FIRM

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⁶ U.S. Publ. Pat. App. No. 2009/0124551 to Reid *et al.* (“Reid”).

⁷ “Fatty Acids Composition of Virgin Coconut Oil,” copyright 2010 by Virgin Coconut Oil (“Virgin Coconut Oil”).